IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 17283 of 1998(G)

PETITIONER:

P.G. MANI, AGED 48 YEARS, S/O. GOPALAN (LATE),
POTTEKKAT HOUSE, KARAMUKKU VILLAGE,
KANDASSAN KADAVU P.O., THRISSUR DISTRICT.

BY ADV. SRI.C.C.THOMAS
SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SUB INSPECTOR OF POLICE, EDAKKARA,
NILAMBUR.

3. THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NILAMBUR.

BY ADV. SMT. M.K. PUSHPALATHA, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P. NO. 30467/1998 IN O.P. NO. 17283/1998

DISMISSED

16.11.2007 sd/- THOTTATHIL B. RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOCOPY OF THE F.I.R. IN CRIME NO. 245/98 OF THE EDAKKARA POLICE STATION.

/True Copy/

P.A to Judge.

THOTTATHIL B. RADHAKRISHNAN , J

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O.P. NO. 17283 OF 1998

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Dated this the 16th day of November, 2007.

JUDGMENT

The petitioner is the 2nd accused in terms of Ext.P1 F.I.R. drawn up alleging offences punishable under Sections 55(i) and 64(A) of the Abkari Act. His contention is that he is in no way involved in the alleged selling of toddy, though he is admittedly the owner of the building where the activity is alleged to have occurred. The 1st accused is stated to be a sales man and the licensee is, going by the counter affidavit, yet another person. Under such circumstances, this Court had stayed the proceedings against the petitioner under Section 55(i) of the Act.

2. It can be seen that the contention of the petitioner is that he had nothing to do with the transaction and that he is residing far away from the scene of occurrence. It was also his case that the building was given on rent to the contractor. Therefore, while it may be doubtful that the case under Section 55(i) of the Act would lie against the petitioner, a decision on that issue would revolve on the material aspects as to the factual

disputes involved. So much so, I do not venture to exercise the writ jurisdiction and enter adjudication on such matters.

3. For the aforesaid reasons, this writ petition is closed without prejudice to the right of the petitioner to move the competent criminal court seeking discharge or annulment of the charge under Section 55(i) insofar as it is against the petitioner and also to seek other reliefs, as may be available before that Court. Having regard to the long passage of time and the fact that there was an interim order in favour of the petitioner, he moves for bail with an outer limit of one month from today and if he is released on bail, his personal appearance shall not be insisted upon. However, if the criminal court concludes that the petitioner shall stand trial, the direction to dispense with personal appearance would stand recalled and the criminal court may issue such orders as it may deem fit.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

rv

THOTTATHIL B. RADHAKRISHNAN, J

O.P. NO. 17283 of 1998

16th day of November, 2007

JUDGMENT